



मुख्यालय
कर्मचारी राज्य बीमा निगम
पंचदीप भवन, कॉमरेड इंद्रजीत गुप्ता मार्ग, नई दिल्ली-02
(ISO 9001-2000 Certified) Website-www.esic.nic.in
E-mail : dpc-medhq@esic.nic.in, VOIP : 10011031

File No.-A-33/14/1/2015/DPC/Med

Dated:-27/10/20

ORDER

In pursuance to DOP&T OM No. 21011/102/2015-Estt.(A-II)-Part II dated 18.4.19, the APAR (through SPARROW portal) for the year 2018-19 was disclosed online to Dr. Jyotirmoy Kirtania, Associate Professor, ESICMC & Hospital. He made representation on SPARROW portal on 22.10.19 for **expunging certain remarks given by his reporting Officer.**

2. In the representation dated 22/11/19, Dr. Jyotirmoy Kirtania, Associate Professor *inter alia* submitted that-

- Towards **Attitude to work, Capacity to work in team work and Ability to motivate and develop subordinates** grading given by reporting officer is 6 which should be considered to revise on the basis of his verifiable work done and special achievements,
- for **Integrity**, assessment given by reporting officer is 'fair' which is not as per rules and the comment given is inappropriate,
- In **Pen picture** the reporting officer has assessed that his administrative capacity is many times under scanner and his junior colleagues often complained against administrative harassment and partial attitude by him etc. These are false and unsubstantiated and must be expunged .
- Adverse comments of reporting officer are personally prejudiced, lack substance and are utterly false.

3. Views of Reporting and Reviewing officers were also taken on the representation which are as under-

Comments by Reporting officer (Dr. Joydeb Roy Chowdhury, DEAN Joka)

- No additional alteration is needed. Prof. Kirtania is a skilled and highly educated Anaesthetist. A few observations have been placed for his attention where there is scope for his improvement.

Comments by Reviewing officer (Dr. P.L. Chaudhary, MC(ME)).

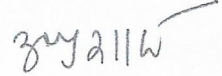
- Observations of the Reporting officer were not considered as adverse but for improvement.
- The assessment by undersigned (ie reviewing officer) is in order.

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4. Undersigned perused and examined exhaustively the entries/remarks of the Reporting Officer and Reviewing officer in the APAR of Dr. Jyotirmoy Kirtania, Associate Professor for 2018-19 and representation dated 22.10.19 in all parameters. It has been observed that the official has been assessed at 7.14 by both, the Reporting Officer and the Reviewing officer. In pen picture, however, the Reporting Officer has given the remarks that **"his administrative capacity is many times under scanner and his junior colleagues often complained against administrative harassment and partial attitude by him etc."**. As these remarks have not been substantiated or proved, same shall be expunged. Undersigned is also of the view that the remarks given against 'Integrity' column are not as per rule and since nothing adverse is mentioned and only 'fair' is mentioned, the same is to be treated as **'Beyond Doubt'**.

5. Other than the above, undersigned, is of the view that the appellant Medical Officer is assessed appropriately by his reporting & reviewing officer. Hence, the APAR for 2018-19 does not require any other interference.

This disposes off the representation dated 22.10.19 of Dr. Jyotirmoy Kirtania, Associate Professor.



(अनुराधा प्रसाद)
महानिदेशक

To,

Dr. Jyotirmoy Kirtania, Associate Professor,
ESICMC & Hospital Joka.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 350/00416/2020

Date of order: 24.6.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dr. Jyotirmay Kritania,
Son of Shri Jogesh Chandra Kirtania,
Aged about 42 years,
Presently working as
Professor of Anesthesiology
At ESI-PGIMS Manicktala,
54, Bagmari Road,
Kolkata - 700 054,
Permanent resident of 9/1/2,
B.C. Roy Path,
P.O. - Shyamnagar,
P.S. Jagaddal,
Dist. - North 24 Parganas,
743127.

... Applicant

VS.

1. The Union of India,
Service through the Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi,
Pin - 110 001.
2. The Secretary,
Department of Personnel & Training (DOPT),
Government of India,
North Block,
New Delhi - 110 001.
3. The Under Secretary to
The Government of India,
Ministry of Personnel,
Public Grievances and Pension,
Department of Personnel & Training (DOPT),
Government of India,
North Block,
New Delhi - 110 001.



4. The Director General,
Employees' State Insurance Corporation,
Panchdeep Bhawan,
Comrade Indrajeet Gupta (CIG) Marg,
New Delhi - 110 002.
5. The Medical Commissioner (Medical Education),
Employees State Insurance Corporation,
Panchdeep Bhawan,
Comrade Indrajeet Gupta (CIG) Marg,
New Delhi - 110 002.
6. The Dean In-Charge,
ESIC Medical College Joka,
Diamond Harbour Road,
Joka,
Kolkata - 700 104.
7. The Assistant Director and APAR Custodian,
ESIC Medical College,
Joka,
Diamond Harbour Road,
Joka,
Kolkata - 700 104.
8. Dr. Atasi Das,
Assistant Professor,
ESIC Medical College Joka,
Diamond Harbour Road,
Joka,
Kolkata - 700 104.

... Respondents

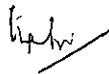
For the Applicant : Mr. B. Nandy, Counsel

For the Respondents : Mr. S. Chowdhury, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Being aggrieved with downgrading of his APAR, the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-



- (a) An order do issue directing thereby the Respondent No. 4 to issue 'No Report Certificate' (NRC) to the applicant for the APAR year 2018-19, since both the reporting officer and the reviewing officer grossly violated the DoPT instructions and AIS APAR (Amendment) Rules, 2019 while writing APAR of the applicant and further the Respondent No. 4 has failed to dispose the APAR representation even beyond 90 days of the Govt. (DoPT) set deadline.
- (b) An order do issue directing thereby the respondent authorities to not to take into account the downgraded APAR for the year 2018-2019, in considering the future promotional aspects of the applicant as the same is wholly arbitrary, mechanical and is a result of total non-application of a clear and proper judicious mind.
- (c) An order do issue setting thereby aside and quashing the out-of-context and unsubstantiated false allegation dated 3.5.2019 made by Respondent No. 8, used by Respondent No. 6 to put adverse comment in the 2018-19 APAR as the same is beyond the concerned APAR year and the impugned email dated 03.05.2019 remains a potential tool to put adverse comment in the next year's APAR of the applicant.
- (d) An order do issue directing thereby the Respondent No. 4 to cause an injury by an external impartial committee into the unsubstantiated false allegation dated 03.05.2019 made by the Respondent No. 8 through her email addressed to the Respondent No. 6 within a specified period of time, failing which the alleged issue raised therein shall become null and void.
- (e) Any other order and/or orders as the Hon'ble Tribunal may deem fit & proper."

2. The submissions of the applicant, in short, is as follows:-

The applicant has been functioning as a Professor of Anesthesiology with the respondent authorities since 18.3.2013, and that his overall APAR gradings were 8, 8, 8, 9, 7.5 for the period 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 respectively. The reporting authority, however, allegedly on the basis of unsubstantiated adverse comments, downgraded the applicant with a grading of 7.14 during 2018-19. The applicant would further allege that the said reporting officer violated the DOPT norms in inserting his comments as 'Fair' against the integrity column of his APAR of 2018-2019. The said reporting officer also unjustly took into account certain

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vitiating emails dated 3.5.2019 against the applicant without causing an enquiry into the veracity of such allegations.

The applicant, being aggrieved by such adverse actions, had, within time, represented to the competent authority with point-wise rebuttals along with documentary evidence and also prayed for expunging of "adverse remarks". Although, as per extant circulars, the last date for disposal of such representation had expired on 22.11.2019, the competent authority failed to dispose of the same. In such context, the applicant claims that he is entitled to 'No Report Certificate' (NRC) for the year 2018-2019, non receipt of which would affect his future career prospects, and, hence, this O.A.

3. Ld. Counsel for the respondents would admit that there has been an inadvertent delay in disposing of the representation but would seek an opportunity to decide on the same. Ld. Counsel for the applicant would object urging for adjudication on merit, a claim opposed by his opponent Counsel on the grounds that although the applicant insists that he has an inherent right to receive NRC in the event on non disposal of representation within scheduled time, he has not furnished rules or circulars in support of his claim.

4. Accordingly, in the interest of justice, without entering into the merits of the matter, and, having heard both Ld. Counsel, we would, in partial relaxation of time limit laid down for his purpose, direct the respondent No. 4, who is the Director General, Employees' State Insurance Corporation, New Delhi, or any other competent authority to examine the contents of the representation and to dispose of the same in accordance with law within a period of four weeks from the date of receipt of a copy

[Signature]

of this order. The competent respondent authority, shall, thereafter, convey his decision to the applicant in a reasoned and speaking order.

5. With these directions, the O.A. is disposed of. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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